

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE**

TENTATIVE RULINGS - May 25, 2007

EVENT DATE: 05/29/2007 EVENT TIME: 10:00:00 AM DEPT.: C-71
JUDICIAL OFFICER: Ronald S. Prager

CASE NO.: JCCP4041
CASE TITLE: JCCP4041 COORDINATION PROCEEDING TOBACCO LITIGATION

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)
CAUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings, 04/04/2007

The Court rules on plaintiff/cross-defendant People of the State of California's ("People") motion for judgment on the pleadings on the Second Amended Cross-Complaint ("SACC") as follows:

The motion is denied for the reasons stated below.

The claim requirements do not apply where, as here, the People contracted them away. (Gov. Code §930(a).) If this is done, the claim provision in the written agreement "exclusively governs the claims to which it relates." (Gov. Code §930.4.) Here, the People and U.S. Smokeless Tobacco Co. ("USSTC") signed the Smokeless Tobacco Master Settlement Agreement ("STMSA") on November 23, 1998. Section VII subd. (c)(2) provides that "a party shall provide 30 days' written notice to the Attorney General of each Settling State...of its intent to initiate proceedings" before initiating any proceedings to enforce the terms of the agreement. The SACC alleged that USSTC abided by the STMSA's 30-day notice provision by serving its 30-day notice on the Attorney General. (SACC, ¶¶110-111.) The People's argue that they did not contract away the claim requirements since STMSA did not include an explicit waiver by the People of its right to notice of a claim for money damages under section 905. However, one could also argue that if the People wanted to ensure that the claim requirements weren't contracted away, it would have included a provision in the agreement explicitly stating that the notice requirements set forth in Section VII subd. (c)(2) would be in addition to the claim requirement set forth in the Government Code section 900 et seq.

Even assuming the People had not contracted away the claim requirements, USSTC's notice was a claim as presented. "A 'claim as presented' is a claim that is defective in that it fails to comply substantially with Government Code sections 910 and 910.2, but nonetheless puts the public entity on notice that the claimant is attempting to file a valid claim and that litigation will result if it is not paid or otherwise resolved." (*Alliance Fin. v. City & County of San Francisco* (1998) 64 Cal.App.4th 635, 643 (hereafter "*Alliance*").) The Court notes that the court in *Alliance* found the notice sent to an agency different from the one specified can nevertheless constitute a claim as presented. (*Id.* at p. 650.) Here, USSTC's 30-day notice put the People on notice that USSTC was asserting a claim against it that if not resolved would result in litigation. Therefore, the People had an obligation to inform USSTC of its view that a 30-day notice did not comply with the CTCA. (SACC, ¶110.) The People did not do so. (*Id.* at ¶111.)

As to the other arguments proffered by USSTC, the Court has concluded that they do not support USSTC's position given the facts as presented.

IT IS SO ORDERED.